

Appl. No. 09/936,609

**REMARKS/ARGUMENTS****I. Amendments**

The reference to priority application has been inserted into the specification at page 1.

Claims 67 to 71 and 85 to 88 are amended. Claims 89 to 94 are added. By this amendment, claims 67 to 94 are pending in the instant application.

Claims 67 and 68 are amended to recite both the validation steps and the step of the test being validated. The amendments are supported throughout the specification, specifically at pages 26 to 29.

Claim 69 is amended for proper antecedents. Claims 70 and 71 are amended to independent claim format. Claims 85 to 88 are amended to correct claim dependencies.

New claims 89 to 94 are dependent on claims 67 and 68 and find support throughout the specification. Specifically, claims 89 to 94 recite subject matter parallel to that in claims 77 to 88.

The Examiner is requested to examine all the pending claims, including new claims 89 to 94.

**II. Informalities**

Claims 67 to 88 are amended to correct the term "fiber".

**III. Rejection of Claims 67, 68 and 85 to 88 Under 35 USC § 112, Second Paragraph**

The Examiner rejects claims 67 and 68 as being indefinite. Applicant submits that the claims, as amended, are clear with respect to correlating the results of the use of the intercalator with both the state of the muscle fiber and the activation state. Claim 68 as amended makes clear the use of the myotoxin in the method.

Claims 85 to 88 are amended to depend on claims 81 to 84, respectively.

Applicant submits that the claims are clearly defined. The Examiner is requested to withdraw the rejection under 35 USC § 112, second paragraph.

**IV. Rejection of Claim 67 under 35 USC § 102(e)**

The Examiner rejects claim 67 as being anticipated by US Patent No. 6,444,642 to Sklar et al. ("Sklar). Applicant traverses.

Sklar merely uses propidium iodide to stain dead cells. Claim 67, as amended, recites

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both the validation step and the step of the test being validated. Sklar does not disclose the step of determining a change in activation state of the muscle precursor cells, nor does Sklar disclose that absence of myonuclear DNA intercalation indicates that the fiber is intact and that the change in activation state of muscle precursor cells occurs as a result of a change in a muscle fiber state from the intact state. Since Sklar does not disclose all elements of the claim, the reference does not anticipate the claim. Withdrawal of the rejection under 35 USC § 102(e) in view of Sklar et al. is requested.

#### V. Concluding Remarks

In view of the above amendments and remarks, reconsideration and favorable action on all pending claims is requested. If any questions or issues remain, the Examiner is invited to contact the undersigned at the telephone number set forth below so that a prompt disposition of this application can be achieved.

Should the Examiner have any questions or comments regarding the pending application or this amendment, the Examiner is requested to telephone the undersigned at (613) 232-2486.

If there are any fees due in connection with the filing of this amendment, please charge the fees to our deposit account number 19-2550. If a fee is required for an extension of time under 37 CFR 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

By   
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Date: March 15, 2005

THN:bbp